IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/04/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

CRIMINAL APPEAL No.3 OF 1997.

Venkatesh @ Venkatesan ...Appellant

-Vs-

State rep. by
The Inspector of Police,
Thudialur Police Station. ... Respondent.

Criminal Appeal preferred under Section 374 Cr.P.C. for the relief as stated therein.

For Appellant : Mr.V.Gopinath,
senior counsel for
M/s.K.Selvarangam
L.Mahendran

For Respondent: Mr.E.Raja,
Addl.Public Prosecutor.

:JUDGMENT

(Judgment of the Court was delivered by V.Kanagaraj, J.)
This Criminal Appeal is directed against the conviction and sentence passed by the Court of Principal Sessions Judge, Coimbatore, as per the judgment dated 21.11.1996 rendered in S.C.No.60 of 1996 thereby convicting the appellant/accused for the commission of an offence punishable under Section 302 IPC and sentencing him to undergo imprisonment for life.

2. The charge as framed against the accused before the Court of Principal Sessions Judge, Coimbatore is that on 19.3.1994 at 3.00 a.m., the accused stabbed one Saroja indiscriminately with a knife at her residence at Jamedhar Street, Koilmedu, Velandipalayam with an intention to murder her and the said Saroja succumbed to the injuries on the same day at 7.45 p.m. and hence the charge against the accused under Section 302 IPC.

3. The Court of Sessions, Coimbatore has conducted a full trial into the above charge with due opportunity for the prosecution and the defence as well to exhaust their remedies, during which on the part of the prosecution, whose burden it is to prove the charge beyond all reasonable doubts as warranted under law, has examined P.Ws.1 to 16 for oral evidence and has marked Exs.P1 to P.22 as documentary evidence besides marking material objects viz. M.Os.1 to 9. On the side of the defence, no witness has been examined nor any document marked as evidence and in appreciation of the said evidence placed on record as aforementioned, the Court of Sessions, Coimbatore has ultimately arrived at the conclusion to convict the accused for the offence charged under Section 302 IPC and accordingly has passed on a sentence of imprisonment for life against the accused as per its judgment dated 21 .11.1996 and it is this conviction and sentence which are under challenge in the above Criminal Appeal before this Court.

4. Tracing the history of the above Criminal appeal coming to be preferred by the accused before this Court, what comes to be known is that the Inspector of Police, Thudiyalur Police Station, Coimbatore District has registered a case in its Crime No.183 of 1994 against the appellant/accused stating thereby that one K.Parthasarathy who is a native of Ammapettai in Salem town married one Swornambal and begot five children, four daughters and one son who is the appellant herein and at a later point of time, about 18 years back, he also married one Saroja as the second wife for whom there was no issue; that on account of the second marriage, the peace in the family got disturbed and the relationship of the said Parthasarathy with his first wife and her children became strained, as a result of which he got himself displaced with the second wife to Thudiyalur and started living with the second wife at Jamedhar Street, Koilmedu, Velandipalayam for 14 years, working in a cinema theatre and selling rice and groceries and thus eking out his livelihood, a portion of which had also been sent by him to his first wife and her children besides visiting their house at times. However, the second wife Saroja was not in the habit of visiting the house of the first wife, but ultimately the said Parthasarathy and his second wife seeking better fortune decided to come back to Salem and on arrival, for some times, the second wife Saroja stayed with her younger sister Kanchana and two or three days prior to the date of occurrence, she returned to Velandipalayam to check up whether the house which was kept under lock was intact and that the accused who is the son of the first wife having become aggrieved on the ground that only because of Saroja, the second wife, his father started neglecting his mother and her children and on coming to know that the said Saroja had gone to Velandipalayam, on 18.3.1994 he had left Salem and having entered into the house the said Saroja by 11.00 p.m on that day, he stabbed her indiscriminately at 3.00 a.m. on 19.3.1994 resulting in her admission in the Coimbatore Medical College Hospital immediately thereafter, where she succumbed to the injuries sustained on the same day at 7.45 p.m.

5. During trial, P.Ws.1 and 2 deposed that the accused knocked the door of the deceased at 11.00 p.m. on 18.3.1994 and when the deceased opened the door, he entered into the house of the deceased and at about 3.00 a.m. on 19.3.1994, they heard the cries of the deceased and when they went to the spot, they saw the deceased with bleeding injuries on her chest, back and

stomach at the door-step of her house and that they removed her to the Hospital. P.W.3 is the husband of the deceased and father of the accused. He would depose about his second marriage with the deceased and enmity of the accused with the deceased. P.W.4 is the Doctor who examined the deceased at 4.00 a.m. on 19.3 .1994 and found 12 injuries and issued Ex.P4 Accident Register. P.W.5 is yet another Doctor who was on duty in the Coimbatore Medical College Hospital, Coimbatore and examined the deceased at 4.30 a.m. on 1 9.3.1994 for imparting treatment. P.W.6 is yet another Doctor who was in-charge of Trauma Ward and Surgical Ward in the Coimbatore Medical College and he sent the death intimation in Ex.P.6 to the Police on 19.3.1994. P.W.7 is the Post Mortem Doctor. P.W.8 is the neighbour of the accused and P.W.3 and he turned hostile. P.W.9 is the driver of the auto, in which the deceased was taken to the hospital. P.W.1 0 is the photographer who took the M.O.4 series photographs of the deceased, the negatives of which are marked as M.O.5 series. P.W.11 is the mahazar witness for recovery of M.Os.6 to 8. P.W.12 is the Police Constable attached to the Thudiyalur Police Station, who took the dead body of the deceased for Post Mortem. P.W.13 is the Head Clerk of the Judicial Magistrate Court No.III, Coimbatore, who spoke about the sending of the material objects for che mical examination. P.W.14 is the Magistrate who recorded the dying declaration of the deceased in Ex.P.17. P.W.15 is the Sub Inspector of Police of Thudiyalur Police Station who would depose about the registration of the case and recovery of M.Os. P.W.16 is the Inspector of Police, who conducted the investigation in the case and having collected all material proofs in the form of statements, documents and Material Objects, ultimately laid the charge-sheet in the case.

6. The trial Court, having examined the entire evidece placed on record has ultimately convicted and sentenced the accused, as mentioned supra. Aggrieved against the conviction and sentence as passed by the Court of Principal Sessions Judge, Coimbatore, the accused/ appellant has come forward to prefer the above Criminal Appeal on grounds such as that the prosecution has failed to prove its case beyond reasonable doubts; that the court below ought to have seen that the alleged earlier dying declaration made by the deceased to P.Ws.1 and 2 is not consistent and it has not been informed to any person till 20.3.199 4, even though the occurrence took place on 19.3.1994; that as per the dying declaration, the occurrence is alleged to have taken place at 3.00 a.m. inside the house, whereas Ex.P.17 shows that the occurrence took place at 11.00 p.m. on 18.3.1994; that as per Ex.P.17, the accused was caught hold of by one Krishnamurthy, whereas in the other dying declaration, there is no reference to Krishnamurthy at all; that EX.P.4 shows that the deceased had 12 cut injuries, but Ex.P.7 discloses that there were 12 incised injuries, whereas P.Ws.4,6 and 7 categorically state that there is difference between the cut injuries and incised wounds; that the conduct of P.Ws.1 and 2 in not informing the police or sending news to the police till 7.15 a.m. is highly artificial and the police must have gone to the scene of occurrence on 19.3 .1994 even before sunrise; that the court below ought to have held that according to P.W.2, she saw the deceased with one unknown person at 11.00 p.m. and the deceased opened the door and they went into the house of the deceased; that P.W.2 could not have seen the face of the accused, but could have only seen the back of the accused prior to the occurrence and as such could not have identified him; that according to P.W.2, she

accompanied the deceased in the autorickshaw to the hospital, but there were no bloodstains on her clothes; that according to Exs.P.4 and P.7, one Karuppasamy brought the deceased to the hospital and he has not been examined; that in the absence of any identification parade, the evidence of P.Ws.1 and 2 cannot be accepted; that Ex.P.15 reveals that the deceased's clothes have 'O Group' bloodstains whereas the deceased's blood belongs to 'B positive group'; that there is no reference to light in Exs.P.1, P.4, P.17, P.18, P.20 rough sketch and Ex.P.22, inquest report except the evidence of P.Ws.1 and 2; that Ex.P.17 was produced only at the time of examining P.W.6 and the fact that no investigation was done with regard to Ex.P.7 would show that the investigation in this case is highly biased. On such and other grounds urged, the appellant/accused would ultimately pray to allow the appeal setting aside the conviction and sentence passed by the Court of Sessions, Coimbatore as pe r its Judgment dated 21.11.1996 in S.C.No.60 of 1996.

7. During arguments, the learned senior counsel appearing on behalf of the appellant, though apprised the Court on very many aspects on facts, still, would lay emphasis on certain serious inconsistencies or anomalies or violent contradictions that have occurred into the case of the prosecution, some of which even going unexplained. Two instances have been glaringly pointed out on the part of the appellant by the learned senior counsel, the first one being the contradictory versions adduced by the very deceased prior to her death, one version in her statement given to the Doctor and the Police borne by Exs.P.4 and P.18 out of which Ex.P.4 form the Accident Register and Ex.P.18 form the FIR and the other version in her dying declaration given to the Magistrate concerned, in the former i.e. in Exs.P.4 and P.18 clearly stating that though the accused entered into her house at 11.00 p.m. on 18.3.1994, the actual occurrence of stabbing the deceased took place inside her house only in the early hours of next day i.e. at 3.00 a.m. on 19.3.1994 and the prosecution case goes further stating that she had been removed to the Hospital wherein at 4.00 a.m. itself the hospital authorities have started doing their duties and responsibilities of not only preparing Ex.P.4 but also giving the medical aid and by 6.45 a.m., Ex.P.19 FIR had been lodged wherein the deceased had clearly stated that the time of occurrence was at about 3.00 a.m. on 19.3.1994.

8. Just contrarily, in Ex.P.17 Dying Declaration recorded by the Magistrate, it is found that the same deceased had stated to the Magistrate to the effect that the accused came and knocked at her door at 11 .00 p.m. on 18.3.1994 and immediately after opening the door, he started stabbing her with the knife held by him. According to the learned senior counsel appearing on behalf of the appellant, both these versions projected to have been adduced by the deceased herself prior to her death go only to prove that neither of these versions are true and unless the prosecution is able to explain as to which of the versions could be taken into account for proper consideration of the prosecution case, discarding which of the other versions of these two, no valid decision could be arrived at and the learned senior counsel would further feel that the explanation simply offered on the part of the trial Court in Para No.23 of its judgment to the effect that the Dying Declaration recorded under Ex.P.17 may not materially affect the case of the prosecution is not the proper answer for it is a big jolt to the case of the prosecution.

9. The learned senior counsel would also point out yet another contradictory version of vital aspect of the prosecution case i.e. pertaining to the blood group of the deceased. Whereas in Ex.P.7 i.e. the case sheet maintained by the hospital, the blood group of the deceased, on her admission into the traumatic ward, had been noted as ' B positive' whereas in the serological report in Ex.P.15 it is mentioned as 'O Positive', which conclusions have been arrived at by the technicians based on examination of the recoveries made from the deceased i.e. from the bloodstains found on the clothes of the deceased.

10. In answer to these two serious contradictory versions alleged on the part of the appellant, for the first point pertaining to the Dying Declaration, the learned Additional Public Prosecutor would cite a judgment of the Honourable Apex Court delivered in NALLAM VEERA SATYANANDAM AND OTHERS vs. THE PUBLIC PROSECUTOR, HIGH COURT OF A.P. reported in 2004 (2) Supreme 273 wherein it has been held:

"In cases where there are more than one dying declaration, it is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflected the true state of affairs."

11. According to this proposition held by the Honourable Apex Court, if this aspect has to be studied by this Court so as to arrive at a valid conclusion, it must be mentioned that the version given in Exs.P.4 and P.18, which is held as true so far he prosecution side is concerned, had come into existence at the earliest possible time particularly Ex.P.4, which is the Accident Register prepared by the Medical Officer in-charge of the casualty and on admission of the injured within a span of one hour immediately after the occurrence was over, to the effect that the occurrence took place around 3.00 a.m. on 19.3.2004. Likewise, the next version comes through the statement recorded by P.W.15 the Sub Inspector of Police, Thudiyalur P.S. based on which Ex.P.19 FIR had been prepared at 6.45 a.m. and the controversial Ex.P.17 dying declaration has been recorded by the Magistrate only at 8.55 a.m. on 19.3.1994 i.e. with the gap of 2.40 hours to the coming into being of Ex.P.18 i.e. nearly five hours later to the coming into being of Ex.P.4.

12. In these circumstances, as per the judgment of the Honourable Apex Court, where there are more than two dying declarations made on the part of the deceased at variance or with some difference prior to her death and in realisation of the duty of this Court, if it is considered as to which of the two versions is in its correct and proper perspective reflecting the true state of affairs, no hesitation need be entertained to say that it is the earliest version adduced on the part of the deceased that should be given credence to and since Exs. P.4 and P.18 came into existence at the earliest possible opportunity afforded and without any alien influence wielded, they have to be upheld, rejecting the later different version that comes into play in the form of Ex.P.17.

13. It would be better if this Court further clarifies that the earlier version under Exs.P.4 and P.18 has been adduced by the deceased while she was in a better condition and by the time that the later version under

Ex.P.17 came into existence, various treatments have been imparted and there is the likelihood of her losing her mental balance which she might have maintained at the time she was making Exs.P.4 and P.18. Therefore, there is much reason in taking into confidence the version stated earlier under Exs.P.4 and P.18 and disbelieving and discarding the later version that came into existence in the form of Ex.P.17 dying declaration and hence this Court is of the view that the trial Court has not committed any error in choosing the version given under Exs.P.4 and P.18 and discarding the version given in Ex.P.17 dying declaration further strengthening the case of the prosecution making a mention that the version mentioned in these two vital documents Exs.P.4 and P.18 goes well in tune with the corroborative evidence adduced on the part of P.Ws.1 and 2 and therefore the trial Court has reason to arrive at the same conclusion as it has arrived at in paragraph No.23 of its judgment.

14. Coming to the different version given pertaining to the blood group of the deceased, one version as though the blood group is 'B positive', as it is seen in Ex.P.7 case sheet, and the other version as 'O positive' coming to appear in the serological report, which has been prepared by the technicians concerned after examining the bloodstains in the clothes worn by the deceased at the time of the occurrence, the learned Additional Public prosecutor would believe the version of the serological report further admitting that some mistake has occurred in the entries effected into the case sheet by the Staff Nurse who were in charge of putting such entries. Therefore, this isolated episode that has occurred in the case sheet, though an irresponsible entry, does not vitally affect the entire frame of the prosecution case as per the learned Additional Public Prosecutor and he would, therefore, request the Court to confirm the judgment of the trial Court for there is no other better reason to take a contrary view on appeal by this Court.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel for the appellant and the learned Additional Public Prosecutor for the State what comes to be seen by this Court is that a uniform case has been put up by the prosecution pointing out the finger only against the sole accused, who is the appellant herein, for whom there had been sufficient motive to grudge against the deceased and who has been pointed to have entered into the house of the deceased during the night hours i.e. at 11.00 p.m. on 18.3.1994 which has been witnessed by P.Ws.1 and 2 and having told the deceased that his father wanted her to come immediately and having taken shelter there itself for the night, when the deceased was fast asleep, he started stabbing the deceased indiscriminately on many parts of her body and when the deceased raised a cry, P.Ws.1 and 2 came one by one and they not only saw the accused standing with the knife but also helped removing the deceased to the hospital at the earliest point of time picking up an autorickshaw, where, in spite of intensive treatment imparted, the deceased succumbed to the injuries inflicted on her person by the accused on 19.3.1994 at 7.45 p.m.

16. There is absolutely no ambiguity or place for a deviated thinking to be entertained, away from the definite case projected by the prosecution against the accused and in fact, the deceased had reason to come back to her

residence where the occurrence took place since it is alleged that she was putting up a new house which was nearing completion and to see whether things were intact in the house, which was kept under lock for a few days, travelling from Salem to Coimbatore three days prior to the date of occurrence. Evidence is available in abundance in proof of not only the accused and his mother having abused the deceased while she started towards Coimbatore but also to the effect that the accused left Salem on 18.3.1994 for Coimbatore coupled with the fact that the next day, after the occurrence was over, the accused had also been arrested at Coimbatore. The accused had, in fact, no reason to go to Coimbatore and the one alleged is also unbelievable. Therefore, easy conclusions have been arrived at by the trial Court particularly in view of the evidence available under Exs.P.4 and P.18 coupled with the oral evidence adduced on the part of P.Ws.1 and 2.

17. The chain of evidence adduced on the part of the prosecution witnesses and the documents marked as Exs.P.1 to P.22 coupled with the Material Objects displayed, as extracted supra, would only suggest that there is no room to doubt the genuineness of the case as put up by the prosecution pointing to the accused, who has caused the occurrence of stabbing the deceased to death. Even though certain minor inconsistencies are bound to occur in a case of such nature, which cannot be ruled out in this case also, they cannot belie the main case put up by the prosecution which comes to be proved on the very strong evidence adduced in the form of both oral and documentary and by means of the material objects.

18. A careful perusal of the judgment of the trial Court would also make it clear that the trial Court has been very careful enough to trace all the facts and circumstances as put up by the prosecution and having conducted a full trial with due opportunity for both parties to exhaust their remedies, in which all the evidences have been cogently and coherently adduced on the part of the prosecution so as to believe the version of it, thus bringing home the guilt of the accused in which the appreciation of evidence by the trial Court is also quite falling in line with the expectations of law and there is no doubting the least on such fair appreciation by the trial Court so as to arrive at the valid conclusion to hold the accused guilty of the offence of murder of the deceased in the occurrence that took place in the early hours of 19.3.1994. Therefore, this Court has no reason to cause its interference into the well considered and merited judgment rendered by the trial Court and in these circumstances, the only conclusion that could be arrived at by this Court is to say that no proper ground or valid reason has been assigned or brought forth on the part of the appellant for valid consideration by this Court nor even those grounds and reasons brought forth have been established in evidence and in law and therefore this Court is left with no choice but to arrive at the only conclusion that could be arrived at in the circumstances of the case that is to dismiss the above appeal confirming the conviction and sentence passed by the trial Court against the accused as per its judgment dated 21.11.1996 and hence the following judgment:

In result,
(i) the above appeal does not merit acceptance and deserves only to be

dismissed and is dismissed accordingly.
(ii) The conviction and sentence passed by the Court of Principal Sessions Judge, Coimbatore as per its judgment dated 21.11.1996 made in Sessions Case No.60 of 1996 is confirmed.
(iii) The trial Court is directed to take up immediate steps for securing the accused forthwith to commit him to prison for serving the remaining period of sentence as ordered by the Sessions Court below and confirmed by this Court.

Index: Yes

Internet: Yes

Rao

To

1.The Principal Sessions Judge,
Coimbatore.

2.The Superintendent,
Central Prison, Coimbatore.

3.The Inspector of Police,
Thudialur Police Station,
Coimbatore District.

4.The Public Prosecutor,
High Court, Madras.